



## ENERGY RESOURCES SURCHARGE LAW



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2009-1

ENERGY RESOURCES SURCHARGE LAW

# ENERGY RESOURCES SURCHARGE LAW

## (Part 19, Division 2, Revenue and Taxation Code)

Enacted Statutes 1974, Chapter 991, effective January 1, 1975; amended Statutes 1977, Chapters 579, 624, 921, Statutes 1978, Chapters 1, 827. Statutes 1981, Chapters 714, 914. Statutes 1982, Chapters 5 (First Extra Session), 1067, and 1589. Statutes 1984, Chapters 930, 1020.

- Chapter 1. General Provisions and Definitions. §§ 40001–40010.
- 2. The Surcharge. §§ 40016–40036.
- 3. Special Provisions and Exemptions. §§ 40041–40046.
- 4. Determination of Surcharge. §§ 40051–40105.
- 5. Overpayments and Refunds. §§ 40111–40137.
- 6. Collection of Surcharge. §§ 40141–40167.5.
- 7. Administration. §§ 40171–40216.

### CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 40001. Title.
- § 40002. Construction.
- § 40003. “Surcharge.”
- § 40004. “Person.”
- § 40005. “Board.”
- § 40006. “In this state.”
- § 40007. “Sale” or “Purchase.”
- § 40008. “Consumption.”
- § 40009. “Consumer.”
- § 40010. “Electric utility.”

40001. **Title.** This part is known and may be cited as the “Energy Resources Surcharge Law.”

40002. **Construction.** Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

40003. **“Surcharge.”** “Surcharge” means a tax levied by this state.

40004. **“Person.”** “Person” includes any individual, firm, cooperative organization, fraternal organization, corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, this state, any county, city and county, municipality, district, public agency or subdivision of this state or any other group or combination acting as a unit.

*History.—Stats. 1994, Ch. 1200, in effect September 30, 1994, add “limited liability company”.*

40005. **“Board.”** “Board” means the State Board of Equalization.

40006. **“In this state.”** “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

40007. **“Sale” or “Purchase.”** “Sale” or “purchase” mean the furnishing or receiving of electrical energy for a consideration. “Sale” does not include the charging of batteries when the consideration therefor is not computed upon the kilowatt-hours of electrical energy furnished.

40008. **“Consumption.”** “Consumption” means the utilization or employment of electrical energy. The term does not include the receiving of electrical energy by an electric utility for resale.

40009. **“Consumer.”** “Consumer” means any person receiving for consumption electrical energy furnished by an electric utility and includes a person receiving electrical energy for redistribution for the use of his tenants.

40010. **“Electric utility.”** “Electric utility” means any person engaged in producing, generating, transmitting, furnishing, distributing or delivering electrical energy for sale without regard to whether the person is subject to regulation or is regulated by the Public Utilities Commission. The term does not include a person who generates electrical energy or redistributes electrical energy solely for his own use or for the use of his tenants and not for sale to others.

When the board determines that it is necessary for the efficient administration of this part, the board may regard any person not primarily engaged in the business of selling electrical energy who purchases electrical energy for distribution to others as a consumer and not as an electric utility.

## CHAPTER 2. THE SURCHARGE

- |         |    |   |
|---------|----|---|
| Article | 1. | Imposition of Surcharge. §§ 40016-40025.  |
|         | 2. | Adjustment of Surcharge Rate. [Repealed.] |
|         | 3. | Registration. §§ 40035-40036.             |

### Article 1. Imposition of Surcharge

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| § 40016.   | Imposition and rate of surcharge.           |
| § 40018.   | Liability for surcharge.                    |
| § 40019.   | Collection by electric utility.             |
| § 40019.1. | Collection from another electric utility.   |
| § 40020.   | Surcharge to be added; surcharge statement. |
| § 40021.   | Surcharge collections are debts.            |
| § 40022.   | Application of collections.                 |
| § 40023.   | Worthless accounts.                         |
| § 40024.   | Compliance.                                 |
| § 40025.   | Rate; date of application.                  |

40016. **Imposition and rate of surcharge.** (a) A surcharge is imposed on the consumption in this state of electrical energy purchased from an electric utility on and after January 1, 2003, at the rate of three-tenths mill (\$0.0003) per kilowatthour, or at the rate determined pursuant to subdivision (b).

(b) The Energy Commission shall fix the rate at a public meeting in each November for each calendar year starting the following January. Under no circumstances may the rate fixed exceed three-tenths mill (\$0.0003) per kilowatthour. If the commission fails to fix the rate in any November, the surcharge shall continue at the rate in effect during that November.

History.—Stats. 1982, Ch. 1067, in effect January 1, 1983, operative July 1, 1983, added “(a)” before “A surcharge,” substituted “the rate” for “such other rate as may be” after “or at” and “subdivision (b)” for “Article 2 . . . part” after “pursuant to” in new subdivision (a), and added subdivision “(b).” Stats. 2002, Ch. 1033 (AB 3009), in effect September 28, 2002, substituted “2003” for “1975” after “January 1,” substituted “three-tenths mill (\$0.0003)” for “one-tenth mill (\$0.0001)” after “the rate of,” substituted “kilowatthour” for “kilowatt-hour” after “per,” and substituted “determined” for “fixed” after “or at the rate” in subdivision (a); completely revised subdivision (b).

40018. **Liability for surcharge.** Every person consuming electrical energy in this state purchased from an electric utility, or the United States or an agency thereof, is liable for the surcharge. His liability is not extinguished until the surcharge has been paid to this state, except that payment to an electric utility registered under this part is sufficient to relieve the consumer from further liability for the surcharge.

*History.—Stats. 1977, Ch. 624, effective January 1, 1978, added “, or the United States or an agency thereof,” in the first sentence.*

40019. **Collection by electric utility.** Every electric utility making sales of electrical energy to consumers in this state shall collect the surcharge from each consumer, other than a consumer that is an electric utility, at the time it collects its billings from the consumer for the electrical energy sold; provided, the duty to collect the surcharge from a consumer shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this part.

40019.1. **Collection from another electric utility.** Notwithstanding the provisions of Section 40019, an electric utility may collect the surcharge from another electric utility under such terms and conditions as are agreed upon by the electric utilities involved and the board.

*History.—Added by Stats. 1977, Ch. 624, effective January 1, 1978.*

40020. **Surcharge to be added; surcharge statement.** The surcharge required to be collected by the electric utility from the consumer shall be added to the charges to the consumer for the electrical energy sold. The amount of the surcharge may be stated separately. If the electric utility does not separately state the amount of the surcharge, the electric utility shall print on the billing a notice to the effect that the charges include energy resources surcharge computed at (applicable rate) mill per kilowatt-hour. Until January 1, 1976, such notice need not appear on the billing itself provided that the electric utility notifies each of its customers, no later than at the time it renders a bill for the first regular billing period applicable to that person which starts on or after the operative date of this part, that electrical energy charges shall include energy resources surcharge computed at (applicable rate) mill per kilowatt-hour. If the Board of Equalization fixes a new rate in 1975, the electric utility shall notify its customers of the new rate at or prior to the time a billing is rendered to the customer subject to the new rate if the electric utility does not separately state the amount of the surcharge or print on the billing notice that the surcharge is included in the charges.

40021. **Surcharge collections are debts.** The surcharge required to be collected by the electric utility, and any amount unreturned to the consumer which is not a surcharge but was collected from the consumer as representing a surcharge, constitutes debts owed by the electric utility to this state.

40022. **Application of collections.** Any amounts collected by an electric utility from a consumer on account of the purchase of electrical energy the consumption of which is subject to the surcharge shall be applied

proportionately between the liability of the consumer on account of the purchase of the electrical energy and the liability of the consumer for the surcharge.

40023. **Worthless accounts.** An electric utility is relieved from liability to collect the surcharge insofar as the base upon which the surcharge is imposed is represented by accounts which have been found to be worthless and charged off in accordance with generally accepted accounting principles. If the electric utility has previously paid the amount of the surcharge it may, under regulations prescribed by the board, take as a deduction on its return the amount found to be worthless and charged off. If any such accounts are thereafter collected in whole or in part the surcharge so collected shall be paid with the first return filed after such collection.

The board may by regulation promulgate such other rules with respect to uncollected or worthless accounts as it shall deem necessary to the fair and efficient administration of this part.

40024. **Compliance.** Notwithstanding any other provision of law to the contrary, persons subject to the jurisdiction of the Public Utilities Commission need not obtain any authorization from the commission to comply with the provisions of this part.

*History.—Stats. 1977, Ch. 579, changed "Utility" to "Utilities" following "Public".*

40025. **Rate; date of application.** The rate fixed by the board pursuant to subdivision (b) of Section 40016 shall apply with respect to billing periods beginning on or after July 1, 1983.

*History.—Added by Stats. 1982, Ch. 1067, in effect January 1, 1983, operative July 1, 1983.*

## Article 2. Adjustment of Surcharge Rate \*

- § 40031. Determination of rate. [Repealed.]
- § 40032. Determination time. [Repealed.]
- § 40033. Publication of rate. [Repealed.]
- § 40034. Application of rate. [Repealed.]
- § 40034.5. Adjustment of rate. [Repealed.]

## Article 3. Registration

- § 40035. Registration.
- § 40036. Security requirement.

40035. **Registration.** Every electric utility selling electrical energy for consumption in this state shall register with the board upon a form prescribed by the board and shall set forth the name under which the utility transacts or intends to transact business and such other information as the board may require.

40036. **Security requirement.** (a) When necessary to ensure compliance with this part, the board may require any person subject to this part to place with it the security that the board determines. Security in the form of cash, insured deposits in banks or savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the

\* Article 2 was repealed by Stats. 1982, Ch. 1067, in effect January 1, 1983, operative July 1, 1983.

state, conditioned upon faithful performance of all of the requirements of this part and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section. The amount of security shall be fixed by the board, not to exceed twice the estimated average quarterly liability of persons filing for quarterly periods, determined in the manner that the board deems proper. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax due to the state under this part or any amount of tax required to be collected and paid to the state within the time required.

(b) If, when a person discontinues business, the board holds security pursuant to this section in the form of cash or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed a payment on any liability of the person to the board on the date the business is discontinued.

(c) This section shall not apply to a taxpayer who either has timely filed all returns and paid all tax due to the state under this part for the three consecutive years prior to the effective date of this section, or has, on or before July 31, 1998, timely filed all returns and paid all tax due to the state under this part since the taxpayer registered with the board pursuant to Section 40035. However, the board may require security from any such taxpayer who fails to remain in compliance with the reporting and payment requirements of this part subsequent to the effective date of this section.

**History.**—Added by Stats. 1998, Ch. 649 (AB 911) in effect January 1, 1999.

### CHAPTER 3. SPECIAL PROVISIONS AND EXEMPTIONS

- § 40041. Constitutional exemptions.
- § 40041.5. Board exemption ruling.
- § 40043. Electric utility consumption.
- § 40044. Pooled electrical energy.
- § 40045. Presumption of consumption.
- § 40046. Presumption of correct billing.

**40041. Constitutional exemptions.** The consumption of electrical energy which this state is prohibited from taxing under the Constitution of the United States or under the Constitution of this state is exempt from the surcharge.

**40041.5. Board exemption ruling.** In any instances where an exemption is claimed by reason of the provisions of Section 40041, an electric utility or a consumer may request the board to issue a ruling as to the validity of the exemption, accompanying the request with a statement showing the facts and basis for the claim. The board shall issue its ruling within 30 days of receipt of the request. Pending issuance of the ruling, the electric utility shall not be obligated to collect the surcharge from the claimant.

40043. **Electric utility consumption.** The consumption by an electric utility of purchased electrical energy that is used directly, lost by dissipation or unaccounted for in accordance with generally accepted accounting principles by the electric utility in the process of generation, transmission and distribution of electrical energy is exempt from the surcharge.

40044. **Pooled electrical energy.** When an electric utility purchases electrical energy and pools in its system the energy with electrical energy generated by it, the consumption of electrical energy in this state from the pool by the utility during any quarter shall be deemed to be a consumption of energy generated by it to the extent that the kilowatt-hours of the electrical energy generated by it during the quarter exceeds the kilowatt-hours consumed by the electric utility.

40045. **Presumption of consumption.** For the purpose of the proper administration of this part it shall be presumed that electrical energy sold by an electric utility in this state to other than an electric utility is consumed by the purchaser in this state until the contrary is established.

40046. **Presumption of correct billing.** The amount of kilowatt-hours of electrical energy determined by or stated on a billing of an electric utility in accordance with its business practices and accounting records to have been sold to a consumer during any calendar quarter or billing period of the electric utility shall be presumed to be correct. The presumption may be rebutted by evidence which establishes that the amount of kilowatt-hours was other than such amount.

#### CHAPTER 4. DETERMINATION OF SURCHARGE

- |         |      |                                       |                 |
|---------|------|---------------------------------------|-----------------|
| Article | 1.   | Due and Payable Dates.                | §§ 40051–40053. |
|         | 2.   | Returns and Payments.                 | §§ 40061–40065. |
|         | 2.1. | Payment by Electronic Funds Transfer. | §§ 40067–40069. |
|         | 3.   | Deficiency Determinations.            | §§ 40071–40079. |
|         | 4.   | Determinations if No Return Made.     | §§ 40081–40085. |
|         | 5.   | Redeterminations.                     | §§ 40091–40097. |
|         | 6.   | Interest and Penalties.               | §§ 40101–40104. |

##### Article 1. Due and Payable Dates

- |          |   |
|----------|---|
| § 40051. | Surcharges due.   |
| § 40052. | Surcharges payable.   |
| § 40053. | Determination of surcharges not billed in ordinary course of billing. |

40051. **Surcharges due.** The surcharges imposed by this part and the amounts thereof required to be collected by electric utilities are due quarterly on or before the last day of the month next succeeding each calendar quarter.

40052. **Surcharges payable.** Amounts due under Section 40051 for which a billing for the electrical energy is issued by an electric utility to the consumer prior to the close of a calendar quarter are payable when due.

40053. **Determination of surcharges not billed in ordinary course of billing.** Any amounts of the surcharge required to be paid or collected that are not billed in the ordinary course of the billings by an electric utility may

be determined by the board against the utility or the consumer, or both, in accordance with the provisions of Article 3 (commencing with Section 40071) or 4 (commencing with Section 40081) of this chapter.

## Article 2. Returns and Payments

- § 40061. Return.
- § 40062. Contents of return.
- § 40063. Consumers' returns.
- § 40064. Filing return.
- § 40065. Extensions.

**40061. Return.** On or before the last day of the month following each calendar quarter, a return for the preceding quarterly period shall be filed with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media.

A return shall be filed by every electric utility and by every person purchasing electrical energy, the consumption of which is subject to the surcharge and who has not paid the surcharge billed and required to be collected by an electric utility. The return shall be signed by the person required to file the return or by his or her duly authorized agent. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, added a comma after “calendar quarter”, substituted “in the form . . . electronic media” for “in such a form as the board may prescribe” after “with the board” in the first paragraph; added a comma after “electrical energy” in the first sentence of, added “or her” after “by his” in the second sentence of, and added the fourth sentence to, the second paragraph.

**40062. Contents of return.** The return filed by an electric utility shall show the number of kilowatt-hours of electrical energy sold to consumers in this state for which billing was first made during that quarter that are due and required to be collected for all such billings. The return shall further show the number of kilowatt-hours of electrical energy purchased by the electric utility during the calendar quarter and the number of kilowatt-hours of electrical energy generated by such electric utility during such period. Such return shall also set forth the number of kilowatt-hours consumed during such period by the electric utility for its own use and consumption and such other information as the board deems necessary for the proper administration of this part.

**40063. Consumers' returns.** The board may prescribe the contents of returns of consumers subject to the surcharge. It may require the filing of returns by consumers in addition to those required by Section 40061 in circumstances where it finds that consumers' liabilities are not being included in the return of an electric utility or it determines that consumer returns are necessary for the efficient administration of this part. Consumers' returns shall cover the periods as the board may prescribe and shall be in the form as prescribed by the board, which may include, but not be limited to,

electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “the” for “such” after “shall cover”, and added “and shall be in the form as prescribed by . . . electronic media” after “board may prescribe” in the third sentence, and added the fourth sentence.

**40064. Filing return.** The person required to file the return shall deliver the return together with a remittance of the amount of the surcharge payable to the office of the board.

**40065. Extensions.** The board for good cause may extend not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the surcharge, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge would have been due without the extension of the date of payment.

History.—Stats. 1977, Ch. 624, added the second paragraph. Stats. 1983, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the second paragraph. Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” substituted “Section 6591.5” for “Section 19269”.

## Article 2.1. Payment by Electronic Funds Transfer

- § 40067. Electronic funds transfer payments.
- § 40068. Relief of penalty.
- § 40069. Definitions.
- § 40069. Electronic filing.

**40067. Electronic funds transfer payments.** (a) Any person whose estimated surcharge liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated surcharge liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 40051) and Article 2 (commencing with Section 40061). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state’s demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state’s demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person

who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.

(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated surcharge liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharge due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 40101.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Added by Stats. 2000, Ch. 923 (AB 2894) in effect January 1, 2001. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided "The election shall be operative for a minimum of one year."

**40068. Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 40067. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 2000, Ch. 923 (AB 2894) in effect January 1, 2001.

**40069. Definitions.** (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic

funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of surcharge. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 40067 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

*History.—Added by Stats. 2000, Ch. 923 (AB 2894) in effect January 1, 2001.*

**40069. Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

*History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.*

## Article 3. Deficiency Determinations

- § 40071. Deficiency determinations.
- § 40072. Interest.
- § 40073. Offsets.
- § 40074. 10 percent penalty.
- § 40075. 25 percent penalty.
- § 40076. Notice of determination.
- § 40077. Deficiency determination limitations.
- § 40078. Decedent deficiency determination limitations.
- § 40079. Extension of time.

**40071. Deficiency determinations.** If the board is not satisfied with return or returns of the surcharge or the amount of surcharge required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount payable for one or for more than one period.

**40072. Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the day of payment.

History.—Stats. 1977, Ch. 624, effective January 1, 1978, deleted “at the rate of one-half of 1 percent per month, or fraction thereof,” and changed “date” to “day” in the first sentence, and added the second sentence. Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereafter” after “at the” in the second sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, added “at . . . Section 6591.5,” and deleted the second sentence.

**40073. Offsets.** In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

**40074. 10 percent penalty.** If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

**40075. 25 percent penalty.** If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or authorized rules and regulations, a penalty of 25 percent of the amount of the determination shall be added thereto.

**40076. Notice of determination.** The board shall give to the electric utility or person consuming electrical energy written notice of its determination. The notice shall be placed in a sealed envelope with postage paid addressed to the electric utility or person consuming electrical energy at his address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal

Service, without extension of time for any reason. In lieu of mailing a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**40077. Deficiency determination limitations.** Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

**40078. Decedent deficiency determination limitations.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the surcharge or any portion thereof.

**40079. Extension of time.** If, before the expiration of the time prescribed in Section 40077 for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

*History.*—Added by Stats. 1977, Ch. 624, effective January 1, 1978.

#### Article 4. Determinations If No Return Made

- § 40081. Failure to file determinations; penalty.
- § 40082. Offsets.
- § 40083. Interest.
- § 40084. 25 percent penalty.
- § 40085. Notice of determination.

**40081. Failure to file determinations; penalty.** If any person fails to make a return, the board shall make an estimate of the amount of the kilowatt-hours sold for consumption by the person, or, as the case may be, of the amount of kilowatt-hours purchased by the person, the consumption of which in this state is subject to the surcharge. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state,

adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one period.

*History.*—Stats. 1981, Ch. 714, in effect January 1, 1982, substituted “into” for “in” after “come” in the second sentence.

**40082. Offsets.** In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

**40083. Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

*History.*—Stats. 1977, Ch. 624, effective January 1, 1978, deleted “at the rate of one-half of 1 percent per month, or fraction thereof,” from the first sentence and added the second sentence. Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereafter” after “at the” in the second sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, added “at . . . Section 6591.5,” and deleted the second sentence.

**40084. 25 percent penalty.** If the failure of any person to file a return is due to fraud or an intent to evade this part or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in Section 40081.

**40085. Notice of determination.** Promptly after making its determination the board shall give to the person written notice of the estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

## Article 5. Redeterminations

- § 40091. Petition for redetermination.
- § 40092. Form, content, and amendment of petition.
- § 40093. Oral hearing.
- § 40094. Decrease or increase of determination.
- § 40095. Finality date of redetermination.
- § 40096. Due date of determinations; penalty.
- § 40097. Service of notice.

**40091. Petition for redetermination.** Any person against whom a determination is made under Article 3 (commencing with Section 40071) or 4 (commencing with Section 40081) of this chapter may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

**40092. Form, content, and amendment of petition.** Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

40093. **Oral hearing.** If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

40094. **Decrease or increase of determination.** The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 40075 or Section 40084 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the last day of the calendar month following the quarterly period for which the increase is asserted.

40095. **Finality date of redetermination.** The order or decision of the board upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

40096. **Due date of determination; penalty.** All determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081) are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added "Article" after "(commencing with Section 40071)" and deleted "of this chapter" after "(commencing with Section 40081)" in the first sentence.

40097. **Service of notice.** Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

## Article 6. Interest and Penalties

- § 40101. Interest and penalty.
- § 40101.1. Penalty interest rate. [Repealed.]
- § 40102. Excusable delay.
- § 40103. Relief from interest; disaster.
- § 40103.5. Relief of interest.
- § 40104. Reasonable reliance on written advice; relief from tax, penalty and interest.
- § 40105. Relief of spouse.

40101. **Interest and penalty.** (a) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081), within the time required shall pay a penalty of 10 percent of the surcharge or amount of the surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 40061 shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the surcharge for which the return is required for any one return.

History.—Stats. 1977, Ch. 624, deleted “at the rate of one-half of 1 percent per month, or fraction thereof,” in the first sentence, and added the second sentence. Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereafter” after “at the” in the second sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, deleted “of this chapter,” after “Section 40081),” added “at . . . Section 6951.5,” after “plus interest.” Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, re-numbered first paragraph as subdivision (a), and added subdivision (b) and (c).

**40101.1. Penalty interest rate.** [Repealed by Stats. 1985, Ch. 20, effective July 1, 1985.]

**40102. Excusable delay.** (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40067, 40081, 40096, and 40101.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 1996, Ch. 1087, in effect January 1, 1997, added “, 40096,” after “by Sections 40081” in the first paragraph, and added “or she” after “upon which he” and added “or her” after “bases his” in the second paragraph. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, re-numbered first paragraph as subdivision (a), added “40067” after “provided by Sections” of subdivision (a), re-numbered second sentence as subdivision (b), added “Except as provided in subdivision (c),” before “any person seeking” to subdivision (b), added subdivision (c).

**40103. Relief from interest; disaster.** If the board finds that a person’s failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 40065, 40067, 40083, and 40101.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added “40067,” after “by Sections 40065,” of first sentence, added “or she” after “upon which he” of second sentence and added “or her” after “bases his” of second sentence.

**40103.5. Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay the surcharge is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person liable for the surcharge.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on surcharge liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted “this part” for “Sections 40083 and 40101” in subdivision (a).

**40104. Reasonable reliance on written advice; relief from tax, penalty, and interest.** (a) If the board finds that a person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the surcharge imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person’s failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to surcharge under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the surcharge, or stating the conditions under which the activity or transaction is subject to the surcharge.

(3) The liability for surcharges applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board’s regulations, or a final decision of a court, which renders the board’s earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person’s written request to the board and a copy of the board’s written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board’s written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

40105. **Relief of spouse.** (a) Under regulations prescribed by the board, if:

(1) A surcharge liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of surcharge liability is attributable to one spouse; or any amount of the surcharge reported on a return was unpaid and the nonpayment of the reported surcharge liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in surcharge attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the surcharge (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the surcharge.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as an electric utility making sales of electrical energy or as a consumer of electrical energy to which the understatement is attributable. If neither spouse rendered substantial services as an electric utility or a consumer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid surcharge or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

**History.**—Added by Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008.

## CHAPTER 5. OVERPAYMENTS AND REFUNDS

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|---------|----|--------------------------------|-----------------|
| Article | 1. | Claim for Refund.              | §§ 40111–40117. |
|         | 2. | Cancellations.                 | § 40121.        |
|         | 3. | Suit for Refund.               | §§ 40125–40131. |
|         | 4. | Recovery of Erroneous Refunds. | §§ 40135–40137. |

### Article 1. Claim for Refund

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|------------|---|
| § 40111.   | Credits and refunds.  |
| § 40112.   | Refund and credit limitations.                              |
| § 40112.1. | Claim limitation period; financially disabled.              |
| § 40112.2. | Claim limitation period; overpayments from levies or liens. |
| § 40113.   | Form and content of claim.                                  |
| § 40114.   | Effect of failure to file claim.                            |
| § 40115.   | Notice of action on claim.                                  |
| § 40116.   | Interest on overpayment.                                    |
| § 40117.   | Disallowance of interest.                                   |

**40111. Credits and refunds.** (a) If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid, and shall credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

(b) Any overpayment of the surcharge by a consumer to the state shall be credited or refunded by the state to the consumer.

(c) (1) Except as provided in paragraph (2), any overpayment of the surcharge by the consumer to an electric utility that is required to collect the surcharge shall be refunded by the state to the consumer.

(2) If the electric utility has paid the amount to the board and establishes to the satisfaction of the board that it has not collected the amount from the consumer or has refunded the amount to the consumer, the overpayment may be credited or refunded by the state to the electric utility.

**History.**—Stats. 1977, Ch. 921, effective January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in the second paragraph. Stats. 1985, Ch. 591, effective January 1, 1986, substitutes “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in paragraph 2. Stats. 1988, Ch. 1029, in effect January

1, 1989, added “or her” before “successors” in the first and second paragraphs, and substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in paragraph 2. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, certify” for “and shall certify to the State Board of Control” after “records of the board”; substituted “, and shall credit the excess amount collected or paid” for “. If approved by the State Board of Control the excess amount collected or paid shall be credited by the board” after “by whom paid”; added “Any proposed determination . . . of that determination.” in the first paragraph; and deleted the second paragraph which read: “In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.” Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letters (a) and (b) and added subdivision (c).

**40112. Refund and credit limitations.** (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the last day of the month following the close of the quarterly period for which the overpayment was made, or, with respect to determinations made under Article 3 (commencing with Section 40071) or 4 (commencing with Section 40081) of Chapter 4 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within such period. No credit shall be approved by the board after the expiration of such period unless a claim for credit is filed with the board within such period.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 40079 if a claim therefor is filed with the board before the expiration of the period agreed upon.

*History.—Stats. 1977, Ch. 624, effective January 1, 1978, added “(a) Except as provided in subdivision (b);” at the beginning of the first line, and added new paragraph (b).*

**40112.1. Claim limitation period; financially disabled.** (a) The limitation period specified in Section 40112 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person’s spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

**40112.2. Claim limitation period; overpayments from levies or liens.** Notwithstanding Section 40112, a refund of an overpayment of any surcharge, penalty, or interest collected by the board by means of levy,

through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

*History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.*

**40113. Form and content of claim.** Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

**40114. Effect of failure to file claim.** Failure to file a claim within the time prescribed in this article constitutes a waiver of any demand against the state on account of overpayment.

**40115. Notice of action on claim.** Within 30 days after disallowing any claim in whole or in part the board shall give notice of its action to the claimant in the manner prescribed for service of notice of a deficiency determination.

**40116. Interest on overpayment.** Interest at the modified adjusted rate per month established pursuant to Section 6591.5, shall be paid upon any overpayment of any amount of surcharge from the first day of the calendar month following the month during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the surcharge or amount against which the credit is applied.

*History.—Stats. 1977, Ch. 624, effective January 1, 1978, deleted “at the rate of one-half of 1 percent per month” from the first sentence, and added new paragraph (c). Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereafter” after “at the” in subdivision (c). Stats. 1984, Ch. 1020, operative July 1, 1985, added “at . . . Section 6591.5” after “interest”, added “or she” after “he”, and deleted paragraph (c). Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “first” for “last” after “from the”, and substituted “month during . . . addition, a” for “quarterly period for which the overpayment was made; but no” after “month following” in the first paragraph. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, deleted “, or fraction thereof,” after “rate per month” in the first sentence of the first paragraph and added “calendar” after “day of the” in subdivision (a).*

**40117. Disallowance of interest.** (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

*History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).*

## Article 2. Cancellations

§ 40121. Cancellation of illegal determinations.

**40121. Cancellation of illegal determinations.** If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

*History.—Stats. 1977, Ch. 921, effective January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in the first and last sentences. Stats. 1985, Ch. 591, effective January 1, 1986, substitutes “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in first and third sentences. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the first and last sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount”; substituted a comma for “and” after “in its records”; deleted “to the State Board of Control” after “certify”; substituted “, and” for “. If the State Board of Control approves, it shall” after “determination was made”; and substituted “Any proposed determination . . . of that determination” for “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board”.*

## Article 3. Suit for Refund

§ 40125. Enjoining collection forbidden.

§ 40126. Necessity of refund claim.

§ 40127. Refund action limitations.

§ 40128. When refund claim not acted upon.

§ 40129. Disposition of judgment.

§ 40130. Interest.

§ 40131. Judgment for assignee forbidden.

**40125. Enjoining collection forbidden.** No injunction, or writ of mandate, judgment of declaratory relief, or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the state or against any officer of the state to prevent or enjoin the collection under this part of any surcharge, or any amount of surcharge required to be collected.

**40126. Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed pursuant to Article 1 of this chapter.

**40127. Refund action limitations.** Within 90 days after the mailing of the notice of the board’s action upon a claim filed pursuant to Article 1 (commencing with Section 40111) of this chapter, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any city or city and county of this state in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

**40128. When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its action on the

claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

**40129. Disposition of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any surcharge due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

**40130. Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Stats. 1977, Ch. 624, added “to and including December 31, 1977, and at the rate of 12 percent per annum thereafter” following “6 percent per annum”. Stats. 1982, Ch. 5, first Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereafter” before “upon.” Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” added “per annum” after “rate,” and substituted “Section 6591.5” for “Section 19269”.

**40131. Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

#### Article 4. Recovery of Erroneous Refunds \*

§ 40135. Erroneous refunds; action.

§ 40136. Place of trial.

§ 40137. Rules of procedure, etc.

**40135. Erroneous refunds; action.** (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 40071) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller’s warrant or date of credit.

**40136. Place of trial.** In any action brought pursuant to subdivision (a) of Section 40135, the court may, with the consent of the Attorney General, order a change in the place of trial.

**40137. Rules of procedure, etc.** The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 40135, and the

\* Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

**Note.**—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

## CHAPTER 6. COLLECTION OF SURCHARGE

- Article 1.
1. Suit for Surcharge. §§ 40141–40145.
  2. Notice to Withhold. §§ 40151–40156.
  - 2.5. Priority and Lien of Surcharge. §§ 40157–40158.
  3. Warrant for Collection. §§ 40161–40163.
  4. Miscellaneous. §§ 40166–40167.5.

### Article 1. Suit for Surcharge

- § 40141. Court action.  
§ 40142. Rules of procedure.  
§ 40143. Attachment.  
§ 40144. Certificate of delinquency.  
§ 40145. Service of process.

**40141. Court action.** At any time within 10 years after any surcharge or any amount of surcharge required to be collected becomes due and payable, and at any time after any amount determined under Articles 3 (commencing with Section 40071), 4 (commencing with Section 40081), and 5 (commencing with Section 40091) of Chapter 4 of this part becomes due and payable, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of California to collect the amount delinquent together with penalties.

**40142. Rules of procedure.** The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals are applicable to the proceedings.

**40143. Attachment.** In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

**40144. Certificate of delinquency.** In the action a certificate by the board showing the delinquency shall be prima facie evidence of the determination of the surcharge or the amount of surcharge, of the delinquency of the amounts set forth, and of the compliance by the board with all the provisions of this part in relation to the computation and determination of the amounts.

**40145. Service of process.** In any action brought under this part process may be served according to the Code of Civil Procedure and the Civil Code of this state.

### Article 2. Notice to Withhold

- § 40151. Notice to holders of credits and personal property and to debtors.  
§ 40152. Duty to hold credits, other personal property, and debts.  
§ 40153. Duty to advise board; notice to bank.  
§ 40154. Liability for transfer.  
§ 40155. Notice of levy.  
§ 40156. Employer withheld earnings.

**40151. Notice to holders of credits and personal property and to debtors.** If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the board may, not later than five years after the payment became delinquent, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent to the State Controller.

History.—Stats. 1978, Ch. 827, effective January 1, 1979, substituted "first-class" for "registered".

**40152. Duty to hold credits, other personal property, and debts.** After receiving the notice the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.

**40153. Duty to advise board; notice to bank.** All persons so notified shall forthwith after receipt of the notice advise the board of all such credits, other personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

**40154. Liability for transfer.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

*Text of section operative through June 30, 2001*

40155. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a consumer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the consumer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the consumer or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the consumer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)", added comma after "The board may", deleted a comma after "notice of levy", substituted "these" for

"such" after "withhold from", substituted "the" for "such" after "due from", and substituted "the time" for "such times" after "board at", in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" and added "The notice of . . . in subdivision (b)." as the last sentence to subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

*Text of section operative July 1, 2001*

**40155. Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a consumer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the consumer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the consumer or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the consumer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to

the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

**History.**—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “(a)”, added comma after “The board may”, deleted a comma after “notice of levy”, substituted “these” for “such” after “withhold from”, substituted “the” for “such” after “due from”, and substituted “the time” for “such times” after “board at”, in the first paragraph; added “(b)”; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “payments, credits other than payments,” for “credits” after “their control, any” and added “The notice of . . . in subdivision (b).” as the last sentence to subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, deleted “as” after “at the time” in subdivision (a) and substituted “paragraph (29) of subdivision (a) of Section 9102” for “Section 9105” after “as defined in” in subdivision (d).

**40156. Employer withheld earnings.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a user or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant to Section 40155 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person’s account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person’s account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person’s account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

**History.** Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

### Article 2.5. Priority and Lien of Surcharge\*

§ 40157. Priority of claims.

§ 40158. Lien dates.

**40157. Priority of claims.** The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his or her assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

**40158. Lien dates.** (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For all other amounts, the date the assessment is final.

### Article 3. Warrant for Collection

§ 40161. Warrants.

§ 40162. Fees, commissions, and expenses.

§ 40163. Collection of fees, commissions, and expenses.

**40161. Warrants.** At any time within five years after any person is delinquent in the payment of any amount required to be paid under this part

\* Article 2.5 was added by Stats. 1982, Ch. 1589, in effect January 1, 1983.

the board or its authorized representative may issue a warrant for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and a sale pursuant to a writ of execution.

*History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “,marshal or constable” after “to any sheriff” in the second sentence.*

**40162. Fees, commissions, and expenses.** The board shall pay the sheriff or marshal, upon the completion of his or her services pursuant to a warrant, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

*History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “pay the sheriff”, and added “or her” after “completion of his” and after “expenses for his”, in the first sentence.*

**40163. Collection of fees, commissions, and expenses.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the surcharge.

#### Article 4. Miscellaneous

§ 40166. Furnishing of partnership agreement

§ 40167. Installment payment agreement.

§ 40167.5. Installment payment agreement; annual statement.

**40166. Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

*History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.*

**40167. Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any surcharges due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the person liable for the surcharge may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment

agreement shall be void, and the total amount of the surcharge, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of surcharge, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 40096.

**History.**—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (d).

**40167.5. Installment payment agreement; annual statement.** The board shall, beginning no later than January 1, 2001, provide each taxpayer who has an installment payment agreement in effect under Section 40167 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

**History.**—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

## CHAPTER 7. ADMINISTRATION

- Article 1. Regulations, Records, and Reports. §§ 40171–40176.
2. Disposition of Proceeds. §§ 40181–40182.
  3. Violations. §§ 40186–40188.
  4. Notices. § 40191.
  5. The California Taxpayers' Bill of Rights. §§ 40200–40216.

### Uncodified Sections

1. Multiagency task force.

## Article 1. Regulations, Records and Reports

- § 40171. Enforcement by board; rulings and regulations.
- § 40172. Electrical energy records.
- § 40173. Kilowatt-hours records.
- § 40174. Examination of records, meters, and equipment.
- § 40175. Additional reports and estimates; access to records of P.U.C., political subdivisions, and public agencies.
- § 40176. Information confidential; tax preparer.

**40171. Enforcement by board; rulings and regulations.** The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

**40172. Electrical energy records.** Every electric utility engaged in generating, purchasing, transmitting, distributing, consuming or selling electrical energy in this state shall keep such records pertaining thereto in such form as the board may prescribe by rule or regulation.

40173. **Kilowatt-hour records.** Every electric utility shall keep and maintain such records of meter readings and other records as may be necessary for the accurate determination of the kilowatt-hours of electrical energy generated, purchased, consumed or sold by it in this state.

40174. **Examination of records, meters, and equipment.** The board or its authorized representative may make such examination of the records, meters and equipment of any person generating, transmitting, distributing, consuming, purchasing or selling electrical energy and such other investigations as it may deem necessary in carrying out the provisions of this part.

40175. **Additional reports and estimates; access to records of P.U.C., political subdivisions, and public agencies.** In addition to any other reports or returns required under this part, the board may by rule or otherwise require additional, supplemental or other reports from electric utilities, consumers, and any other person generating, purchasing, transmitting, distributing or consuming electrical energy, including verification of the information to be given on and the times for filing of such reports. For the purpose of carrying out its duties under Article 2 (commencing with Section 40031) of Chapter 2 of this part, the board may require such reports of estimates of future availability, generation, sales and consumption of electrical energy from such electric utilities and other persons as it may deem necessary. The board shall have full access to records of the Public Utilities Commission, and any political subdivision or public agency of this state that regulates, operates or owns an electric utility, which pertain to the generation, transmission, distribution, sale, purchase or consumption of electrical energy in this state.

40176. **Information confidential; tax preparer.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 40051), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

Article 2. Disposition of Proceeds

- § 40181. Energy Resources Surcharge Fund.  
§ 40182. Disposition of fund.

**40181. Energy Resources Surcharge Fund.** All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Energy Resources Surcharge Fund, which fund is hereby created.

**40182. Disposition of fund.** All money deposited in the Energy Resources Surcharge Fund under this part shall upon order of the Controller be drawn therefrom and transferred to pay the refunds authorized by this part. The balance shall be transferred to the Energy Resources Programs Account, which is hereby created in the General Fund.

It is the intent of the Legislature that the funds in the Energy Resources Programs Account be used for ongoing energy programs and energy projects deemed appropriate by the Legislature, including, but not limited to, the activities of the State Energy Resources Conservation and Development Commission.

Notwithstanding any other provisions of law to the contrary, all appropriations from the Energy Resources Programs Account shall be made by the annual Budget Act.

History.—Stats. 1982, Ch. 1067, in effect January 1, 1983, operative July 1, 1983, deleted the balance of the first sentence after “transferred,” deleted subdivisions (a), (b), and (c), added “to pay . . . part” at the end of the first sentence of, and added the second sentence to, the first paragraph; and, added the second and third paragraphs.

Article 3. Violations

- § 40186. Criminal penalties.  
§ 40187. Felony provisions.  
§ 40188. Prosecution for violation.

**40186. Criminal penalties.** Any person who fails or refuses to file a return or report required to be made or who fails or refuses to furnish a supplemental report or other data required by the board, or who renders a false or fraudulent report is guilty of a misdemeanor and may be fined not exceeding five hundred dollars (\$500) for each offense.

**40187. Felony provisions.** Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. The determination shall be approved by the executive director or his or her designee. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, two years, or three years, or by both the fine and imprisonment in the discretion of the court.

History.—Added by Stats. 1987, Ch. 1064, effective January 1, 1988. Stats. 1989, Ch. 654, in effect January 1, 1990, substituted “Deputy Director, Business Taxes,” for “administrator of the excise taxes” and “designee” for “supervisor”.

Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "any person who violates this part" for "any violation of this part by any person" after "of this part," in the first sentence, and substituted "executive director or his or her" for "Deputy Director, Business Taxes, or that person's" after "approved by the" and added "by" after "three years, or" in the second sentence.

**40188. Prosecution for violation.** Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after commission of the offense or within two years after the violation is discovered, whichever is later.

**History.—**Added by Stats. 1986, Ch. 1361, effective January 1, 1987.

**Note.**—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41. applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

## Article 4. Notices

§ 40191. Notices.

**40191. Notices.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing of personal service in accordance with any requirement of this part for the giving of notice. Unless otherwise specifically required, any notice required by this part to be mailed or served may be given by mailing or personal service in the manner provided for giving notice of a deficiency determination.

## Article 5. The California Taxpayers' Bill of Rights \*

- § 40200. Administration.
- § 40201. Taxpayers' Rights Advocate.
- § 40202. Education and information program.
- § 40203. Annual hearing for taxpayer proposals.
- § 40204. Preparation of statements by board.
- § 40205. Limit on uses of revenue collected or assessed.
- § 40206. Evaluation of employee's contact with taxpayers.
- § 40207. Plan to timely resolve claims and petitions.
- § 40208. Procedures relating to review conferences.
- § 40209. Reimbursement to taxpayers.
- § 40210. Investigation for nontax administrative purposes.
- § 40211. Settlement of disputed tax liabilities. [Repealed.]
- § 40211. Settlement authority.
- § 40211.5. Offers in compromise.
- § 40212. Release of levy.
- § 40212.5. Return of property.
- § 40213. Exemptions from levy.
- § 40214. Claim for reimbursement of bank charges by taxpayer.
- § 40215. Preliminary notice to taxpayer prior to lien.
- § 40216. Disregard by board employee or officer.

\* Added by Stats. 1992, Ch. 438, in effect January 1, 1993.

40200. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

40201. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

40202. **Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer education materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added "and compliance" after "program for audit" in paragraph (4) of subdivision (b).

40203. **Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Energy Resources Surcharge Law which may further improve voluntary compliance and the relationship between taxpayers and government.

40204. **Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to

taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

**40205. Limit on uses of revenue collected or assessed.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

**40206. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

**40207. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

**40208. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney of supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

**40209. Reimbursement to taxpayers.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

- (1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History-Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "board" for "State Board of Control" after "expenses with the" in paragraph (1) of, substituted "decides" for "makes a recommendation to the State Board of Control" after "The board" in paragraph (3) of, and deleted paragraph (4) which read: "The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer;" from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added "within one year of the date the decision of the board becomes final" after "with the board" in paragraph (1) of, substituted "in an amount . . . its sole discretion" for "which shall be determined by the board" after "to the hearing," in paragraph (3), of, subdivision (a), substituted "the board staff . . . was substantially justified" for "taxpayer has established that the position was not substantially justified" in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted "the notice of determination . . . claim for refund" for "filing petitions for redetermination and claims for refund" in paragraph (1) of subdivision (c).

**40210. Investigation for nontax administrative purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include energy resources surcharge violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

40211. **Settlement of disputed tax liabilities.** [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

40211. **Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General’s written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement the total of which reduction of surcharge and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 497, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added “, for at least one year,” after “placed on file” and substituted “of” for “or” in subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “, itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total surcharge and penalties” after “a reduction of surcharge” in the first paragraph of, and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); and added “, itself,” after “disapproved by the board” in the second sentence of paragraph (1) of subdivision (e).

40211.5. **Offers in compromise.** (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 19 (commencing with Section 40001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer’s present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for

perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, "person" means the taxpayer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

**40212. Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until its has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added "of Division 2" after "(commencing with Section 703.010)" and added "Part 2 of" after "Title 9 of" in subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "that the" for "of any of the following: (1) The" after "in the event" in subdivision (a); substituted subdivision letter "(b)" for paragraph number "(2)" and substituted "may order the release of any" for "orders the release of the" after "Taxpayers' Rights Advocate" in, and added "issued pursuant to...of moneys received," after "notice to withhold" in, subdivision (b); relettered former subdivisions (b) as (c); and added subdivision (d).

**40212.5. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 40167 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 40214.

*History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.*

**40213. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

*History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” after “(commencing with Section 703.010)” and added “Part 2 of” after “Title 9 of”.*

**40214. Claim for reimbursement of bank charges by taxpayer.**

(a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer’s position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*History.—Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, added “and any other . . . check charge fees” after “of bank charges” to subdivision (a), added “and third party” after “the board. Bank” in subdivision (a), added “or third party’s” after “a financial institution’s” in subdivision (a) and added “or third party” after “the financial institution” in subdivision (a).*

**40215. Preliminary notice to taxpayer prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(c) When the board releases a lien erroneously filed, a notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(d) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (d).

**40216. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

### Uncodified Sections

#### § 1. Multiagency task force.

1. **Multiagency task force.** (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as "task force") shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies' laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone "hotline" for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies' ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone "hotline" for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b).

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